

Adopted	Rejected
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## COMMITTEE REPORT

YES:	10
NO:	0

### MR. SPEAKER:

*Your Committee on* **Environmental Affairs**, to which was referred Senate Bill 205, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning the
- 3 environment and natural and cultural resources, and to make an
- 4 appropriation.
- 5 Delete everything after the enacting clause and insert the following:
- 6 SECTION 1. IC 13-20-2-9 IS ADDED TO THE INDIANA CODE
- 7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 8 1, 2007]: **Sec. 9. (a) A person that:**
- 9 **(1) holds a valid construction permit that is issued under this**
- 10 **chapter and authorizes construction for a facility that has not**
- 11 **been substantially developed; and**
- 12 **(2) has not commenced construction within:**
- 13 **(A) five (5) years after the date of the permit; or**
- 14 **(B) another period established by rule or statute;**
- 15 **must apply for a new construction permit and meet the**
- 16 **requirements of all applicable environmental laws existing at the**

1 time the new permit is sought.

2 (b) A person that:

3 (1) holds a valid construction permit that is issued under this  
4 chapter and authorizes construction at an operating facility;  
5 and

6 (2) has not commenced construction within:

7 (A) five (5) years after the date of the permit; or

8 (B) another period established by rule or statute;

9 must meet the requirements of all applicable environmental laws  
10 existing at the time construction is substantially commenced.

11 (c) The periods described in subsections (a) and (b) for a person  
12 to commence construction are tolled pending either of the  
13 following concerning the construction permit:

14 (1) An administrative appeal.

15 (2) A judicial review.

16 SECTION 2. IC 14-8-2-53 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 53. "Conservation  
18 officer" for purposes of IC 14-9-8, has the meaning set forth in  
19 IC 14-9-8-1. refers to an officer employee of the law enforcement  
20 division organized under IC 14-9-8.

21 SECTION 3. IC 14-21-1-2 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. As used in this  
23 chapter, "artifact" means:

24 (1) a feature that is nonportable evidence of past human  
25 behavior or activity and is found on or in the ground,  
26 including structural remains formed before December 31,  
27 1870; or

28 (2) an object made, or shaped by human modified, or used  
29 workmanship before December 31, 1870.

30 SECTION 4. IC 14-21-1-3 IS AMENDED TO READ AS  
31 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. As used in this  
32 chapter, "burial ground" means ground in which human remains are  
33 buried. The term includes the following:

34 (1) The land associated with or incidental to the burial of human  
35 remains.

36 (2) Historic cemeteries or land with human remains buried  
37 before December 31, 1939.

38 SECTION 5. IC 14-21-1-8 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) As used in this chapter, "plan" refers to:

- (1) an archeological plan, as described in subsection (b); or
- (2) a development plan, as described in subsection (c).

(b) As used in this chapter, "archeological plan" means a plan for the systematic recovery, analysis, and disposition by scientific methods of material evidence and information about the life and culture in past ages.

(c) As used in this chapter, "development plan" means:

- (1) a plan for the erection, alteration, or repair of any structure; **or**
- (2) a plan for the excavation of any ground related to construction.**

SECTION 6. IC 14-21-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 24. (a) As used in this section, "agricultural purpose" includes farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, ornamental horticulture, olericulture, pomiculture, animal husbandry, and poultry husbandry.

(b) Sections 25, 26, 28, and 29 of this chapter do not apply to the following:

- (1) Surface coal mining regulated under IC 14-34.
- (2) Cemeteries and human remains subject to IC 23-14.
- (3) Disturbing the earth for an agricultural purpose.
- (4) Collecting any object other than human remains that is visible in whole or in part on the surface of the ground, regardless of the time the object was made or shaped.
- (5) Qualified professional archeologists, as determined by the department, who conduct phase 1 archeological surveys according to guidelines in effect by the department.**

SECTION 7. IC 14-21-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 25. (a) The commission shall adopt rules establishing standards for plans.

(b) With respect to archeological plans, the rules must impose a standard of conduct that does the following:

- (1) Promotes the scientific investigation and conservation of past cultures.
- (2) Considers the interests and expertise of amateur archeologists and professional archeologists.

(c) With respect to development plans, the rules must impose a standard of conduct that preserves and protects both of the following:

(1) The rights and interests of landowners.

(2) The sensitivity of human beings for treating human remains with respect and dignity, as determined by the commission.

(d) Plans required under this chapter must be submitted to the department for approval according to rules adopted by the commission.

**(e) Proposed plans and any reports required by the plans must be reviewed by the division within thirty (30) days after receipt.**

SECTION 8. IC 14-21-1-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 26. (a) A person who disturbs the ground for the purpose of discovering artifacts, ~~or~~ burial objects, **or human remains** must do so in accordance with a plan approved by the department under section 25 of this chapter or under IC 14-3-3.4-14 (before its repeal).

(b) A person who recklessly, knowingly, or intentionally violates this section commits **the following**:

**(1) A Class A misdemeanor, if the violation does not involve disturbing human remains.**

**(2) A Class D felony, if the violation involves disturbing human remains.**

SECTION 9. IC 14-21-1-26.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 26.5. (a) Notwithstanding IC 23-14-44-1, this section does not apply to the following:

(1) A public utility (as defined in IC 8-1-2-1(a)).

(2) A corporation organized under IC 8-1-13.

(3) A municipally owned utility (as defined in IC 8-1-2-1(h)).

(4) A surface coal mining and reclamation operation permitted under IC 14-34.

Except as provided in this subsection, subsection (b), and subsection (c), a person may not disturb the ground within one hundred (100) feet of **the limits of** a burial ground or cemetery for the purpose of **excavating or covering over the ground or** erecting, altering, or repairing any structure without having a development plan approved by the department under section 25 of this chapter or in violation of a development plan approved by the department under section 25 of this chapter. The department must review the development plan not later

1 than sixty (60) days after the development plan is submitted.

2 (b) A development plan:

3 (1) must be approved if a person intends to:

4 (A) excavate or cover over the ground; or

5 (B) construct a new structure or alter or repair an existing  
6 structure;

7 that would significantly impact the burial ground or cemetery; and

8 (2) is not required if a person intends to:

9 (A) excavate or cover over the ground; or

10 (B) erect, alter, or repair an existing structure;

11 for an incidental or existing use that would not impact the burial  
12 ground or cemetery.

13 (c) A development plan for a governmental entity to disturb ground  
14 within one hundred (100) feet of a burial ground or cemetery must be  
15 approved as follows:

16 (1) A development plan of a municipality requires approval of the  
17 executive of the municipality and does not require the approval of  
18 the department. However, if the burial ground or cemetery is  
19 located outside the municipality, approval is also required by the  
20 executive of the county where the burial ground or cemetery is  
21 located. A county cemetery commission established under  
22 IC 23-14-67-2 may advise the executive of the municipality on  
23 whether to approve a development plan.

24 (2) A development plan of a governmental entity other than:

25 (A) a municipality; or

26 (B) the state;

27 requires the approval of the executive of the county where the  
28 governmental entity is located and does not require the approval  
29 of the department. However, if the governmental entity is located  
30 in more than one (1) county, only the approval of the executive of  
31 the county where the burial ground or cemetery is located is  
32 required. A county cemetery commission established under  
33 IC 23-14-67-2 may advise the county executive on whether to  
34 approve a development plan.

35 (3) A development plan of the state requires the approval of the  
36 department.

37 (d) A development plan may require surveys to delimit the  
38 burial ground with respect to the proposed alteration.

(e) **If a burial ground is within an archeological site, an archeological plan is required to be part of the development plan.**

~~(d)~~ (f) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense.

SECTION 10. IC 14-21-1-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 27. (a) A person who disturbs buried human remains **or burial grounds** shall do the following:

(1) Notify the department within two (2) business days of the time of the disturbance.

(2) Treat or rebury the human remains in a manner and place according to rules adopted by the commission or a court order and permit issued by the state department of health under IC 23-14-57.

(b) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor.

SECTION 11. IC 14-21-1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 28. A person who ~~with the intent to disturb ground for the purpose of discovering or removing artifacts, burial objects, grave markers, or human remains, disturbs buried~~ **disturbs** human remains or grave markers **while moving, collecting, or removing artifacts or burial objects** either:

(1) without a plan approved by the department under:

(A) section 25 of this chapter; or

(B) IC 14-3-3.4-14 (before its repeal); or

(2) in violation of such a plan;

commits a Class D felony.

SECTION 12. IC 14-21-1-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 29. (a) A person who discovers, **uncovers, collects, or moves** an artifact or burial object while disturbing the ground for a purpose other than the discovery of artifacts or burial objects shall do the following:

(1) Immediately cease disturbing the ground **and the area within one hundred (100) feet of the artifact or burial object.**

(2) Notify the department within two (2) business days after the time of the disturbance.

(b) After notification under subsection (a), the department may do any of the following:

(1) Authorize the person to continue the ground disturbing activity, with or without conditions.

(2) Require that continued ground disturbance activity be conducted only in accordance with an approved plan. However, this subdivision does not apply after thirty (30) days from the date that the department receives notice.

**(c) A person who violates subsection (a) commits a Class A infraction.**

SECTION 13. IC 14-21-1-32 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 32. (a) Subject to subsections (b) and (c), the division may keep reports and information concerning the location of historic and archeological sites confidential if the director of the division determines that disclosure would likely:**

**(1) risk harm to the historic or archeological site;**

**(2) cause a significant invasion of privacy; or**

**(3) impede the use of a traditional religious site by practitioners.**

**(b) The division may not disclose reports and information required to be confidential under federal law.**

**(c) If the director of the division determines that reports and information should be confidential under subsection (a), the director of the department, in consultation with the director of the division, shall determine who may have access to the confidential reports and information.**

SECTION 14. IC 14-21-1-33 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 33. An employee of the division or a person authorized by the department may accompany a conservation officer on public or private property to determine if there is a violation of this article.**

SECTION 15. IC 14-21-1-34 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 34. (a) The division may conduct a program to assist private homeowners who have accidentally discovered an artifact, a burial object, or human remains and who**

1 need assistance to comply with an approved plan to excavate or  
 2 secure the site from further disturbance. The division may conduct  
 3 the program alone or by entering into an agreement with any  
 4 entity that the division selects.

5 (b) In conducting a program under subsection (a), the division  
 6 may receive gifts and grants under terms, obligations, and  
 7 liabilities that the director of the division considers appropriate.  
 8 The director shall use a gift or grant received under this  
 9 subsection:

10 (1) to carry out subsection (a); and

11 (2) according to the terms and obligations of the gift or grant.

12 (c) The auditor of state shall establish the archeology  
 13 preservation trust fund for purposes of holding money received  
 14 under subsection (b).

15 (d) The director of the division shall administer the archeology  
 16 preservation trust fund. The expenses of administering the  
 17 archeology preservation trust fund shall be paid from money in the  
 18 trust fund.

19 (e) The treasurer of state shall invest the money in the  
 20 archeology preservation trust fund that is not currently needed to  
 21 meet the obligations of the trust fund in the same manner as other  
 22 public trust funds may be invested. The treasurer of state shall  
 23 deposit in the archeology preservation trust fund the interest that  
 24 accrues from the investment of the trust fund.

25 (f) Money in the archeology preservation trust fund at the end  
 26 of a state fiscal year does not revert to the state general fund.  
 27 There is annually appropriated to the division the money in the  
 28 archeology preservation trust fund for the division's use in  
 29 carrying out the purposes of this section.

30 (g) The division may adopt rules under IC 4-22-2 to govern the  
 31 administration of this section.

32 SECTION 16. IC 14-21-1-35 IS ADDED TO THE INDIANA  
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2007]: Sec. 35. (a) In addition to:

35 (1) a:

36 (A) sentence imposed under this chapter for a felony or  
 37 misdemeanor; or

38 (B) judgment imposed under this chapter for an infraction;



1                   **and**  
 2                   **(2) an order for restitution to a victim;**  
 3           **a court may order an individual to make restitution to the**  
 4           **archeology preservation trust fund established under section 34 of**  
 5           **this chapter for the division's costs incurred because of the offense**  
 6           **committed by the individual.**

7           **(b) In ordering restitution under this section, the court shall**  
 8           **consider the following:**

9                   **(1) The schedule of costs submitted to the court by the**  
 10                   **division.**

11                   **(2) The cost to the property owner to restore or repair the**  
 12                   **damaged area of an archeological site or burial ground and**  
 13                   **place the property in the property's original condition as**  
 14                   **nearly as practicable.**

15                   **(3) The amount of restitution that the individual is or will be**  
 16                   **able to pay.**

17           **(c) The court shall immediately forward to the division a copy**  
 18           **of an order for restitution made under this section.**

19           SECTION 17. IC 14-21-1-36 IS ADDED TO THE INDIANA  
 20           CODE AS A NEW SECTION TO READ AS FOLLOWS  
 21           [EFFECTIVE JULY 1, 2007]: **Sec. 36. A person who knowingly or**  
 22           **intentionally receives, retains, or disposes of an artifact, a burial**  
 23           **object, or human remains obtained in violation of this chapter**  
 24           **commits possession of looted property, a Class D felony. However,**  
 25           **the offense is a Class C felony if the fair market cost of carrying**  
 26           **out a scientific archeological investigation of the area that was**  
 27           **damaged to obtain the artifact, burial object, or human remains is**  
 28           **at least one hundred thousand dollars (\$100,000).**

29           SECTION 18. IC 14-22-40-5 IS AMENDED TO READ AS  
 30           FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. As used in this  
 31           chapter, "law enforcement officer" has the meaning set forth in  
 32           IC 35-41-1-17. The term includes a conservation officer. ~~(as defined in~~  
 33           ~~IC 14-9-8-1).~~

34           SECTION 19. IC 23-14-57-4 IS AMENDED TO READ AS  
 35           FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. This chapter does not  
 36           apply to the **following:**

37                   **(1) The disinterment, disinterment, or disurnment of remains**  
 38                   **upon the written order of the coroner of the county in which the**

1 cemetery is situated.

2 **(2) The removal of human remains under a plan approved by**  
 3 **the division of historic preservation and archeology under**  
 4 **IC 14-21-1.**

5 SECTION 20. IC 32-21-5-7 IS AMENDED TO READ AS  
 6 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. The Indiana real  
 7 estate commission established by IC 25-34.1-2-1 shall adopt a specific  
 8 disclosure form that contains the following:

9 (1) Disclosure by the owner of the known condition of the  
 10 following:

11 (A) The foundation.

12 (B) The mechanical systems.

13 (C) The roof.

14 (D) The structure.

15 (E) The water and sewer systems.

16 (F) Additions that may require improvements to the sewage  
 17 disposal system.

18 (G) Other areas that the Indiana real estate commission  
 19 determines are appropriate.

20 (2) A notice to the prospective buyer that contains substantially  
 21 the following language:

22 "The prospective buyer and the owner may wish to obtain  
 23 professional advice or inspections of the property and provide for  
 24 appropriate provisions in a contract between them concerning any  
 25 advice, inspections, defects, or warranties obtained on the  
 26 property.".

27 (3) A notice to the prospective buyer that contains substantially  
 28 the following language:

29 "The representations in this form are the representations of the  
 30 owner and are not the representations of the agent, if any. This  
 31 information is for disclosure only and is not intended to be a part  
 32 of any contract between the buyer and owner.".

33 (4) A disclosure by the owner that an airport is located within a  
 34 geographical distance from the property as determined by the  
 35 Indiana real estate commission. The commission may consider the  
 36 differences between an airport serving commercial airlines and an  
 37 airport that does not serve commercial airlines in determining the  
 38 distance to be disclosed.

1           **(5) Identification by the owner of any part of the property**  
2           **that was subject to surface mining at any time during the**  
3           **twenty (20) years that immediately precede the closing date.**

4           SECTION 21. IC 14-9-8-1 IS REPEALED [EFFECTIVE JULY 1,  
5           2007].

          (Reference is to SB 205 as printed February 21, 2007.)

**and when so amended that said bill do pass.**

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Representative Dvorak